

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 89-550-C - ORDER NO. 91-325
APRIL 24, 1991

IN RE: Application of Telink Telephone)
Systems, Inc. for a Certificate of) ORDER DENYING
Public Convenience and Necessity to) PETITION FOR
Resale Intrastate, InterLATA) REHEARING AND/OR
Telecommunications Services in) RECONSIDERATION
South Carolina.)

This matter comes before the Public Service Commission of South Carolina (the Commission) by way of a Petition for Rehearing and/or Reconsideration (Petition) of Commission Order No. 91-193, issued in the instant Docket on March 8, 1991, filed on behalf of Southern Bell Telephone and Telegraph Company (Southern Bell). Telink Telephone Systems, Inc. (Telink or the Company), the Applicant herein, duly filed a Return to Southern Bell's Petition. The Petition states five allegations of error by the Commission in Order No. 91-193 and requests that the Commission rehear and/or reconsider the issues raised in the Petition.

In paragraph 9(a) of its Petition for Rehearing, Southern Bell recites a litany of alleged errors taken directly from §1-23-380 S.C. Code Ann. (1976 as amended). This recitation is apparently an attempt to keep alive for judicial review all possible grounds for appeal under the statute. This effort, however, is completely ineffectual, as it raises no real issue

concerning this case. This attempt to state a basis for rehearing is meaningless and presents no basis for the Commission to reconsider its Order. Additionally, Southern Bell makes reference that the Commission's decision regarding Telink was done "without providing any notice of its reconsideration of this docket and without allowing any party to present additional information with regard to such reconsideration...." Order No. 91-193 was not on reconsideration. Rather, the Order was issued after public notice and hearing. Order No. 90-908 granted Telink a Certificate to provide intrastate, interLATA long distance service. The matter of Telink's authority to provide intraLATA and local "0+" collect calling was held in abeyance pending the Commission's decision in Docket No. 90-305-C. Order No. 91-193 was issued after the Commission made its determination in Docket No. 90-305-C. All parties to this Docket were aware of the intended procedure and no objections were filed with the Commission.

In paragraph 9(b) of its Petition, Southern Bell alleges that the Commission has committed error in failing to assess a penalty on Telink pursuant to §58-9-1610, S.C. Code Ann. (1976), as amended. This argument is completely misplaced. Section 58-9-1610 is a part of Article 13 of the Code provisions giving the Commission regulatory authority over telephone utilities. Article 13 provides a procedure whereby the Commission may enforce its orders. The article gives the Commission the discretionary authority to determine when to seek penalties under §58-9-1610, S.C. Code Ann. (1976), as amended. The Commission's determination

of when it should seek to have contempt penalties imposed is not a matter properly reviewable in this action. Even if it were, it provides no basis for the Commission to reconsider its findings in Order No. 91-193.

In paragraph 9(c) of its Petition, Southern Bell makes the general conclusory statement that the Commission has failed to make specific findings of fact concerning the issues for resolution in this proceeding. Since Telink's fitness is not an issue (See Order No. 90-908), the only question is whether the public convenience would be served by allowing Telink to provide the services applied for. Order No. 91-193 makes nine (9) specific findings concerning the ways in which the public convenience would be served. Failure to include specific citations to the record is not in violation of the Administrative Procedures Act, §1-23-10 et seq, S.C. Code Ann. (1976 as amended) as implied by the Petition.

With respect to the arguments made in paragraph 9(d) of Southern Bell's petition, the Commission relied upon part of the proceedings in Docket No. 90-305-C which is a companion proceeding to this one. As recognized in Southern Bell's Petition, the Commission in Order No. 90-663 announced that it was

of the opinion that it is necessary to hold another proceeding to determine whether or not COCOTS providing service to confinement facilities should be authorized to provide "0+" intraLATA and local collect operator assisted calls. 1

Order No. 90-663, p. 9. Following this determination the Order states that the Commission is "holding in abeyance its decision

concerning Telink's request for certification." The Commission then issued on September 17, 1990, Order No. 90-871 in which it listed the following issues to be decided:

1. Whether COCOTs providing service to confinement facilities should be authorized to provide "0+" interLATA, and intraLATA and local automated collect calls utilizing store and forward technology;

2. Whether Pay-Tel and Coin Telephones should be granted certificates of public convenience and necessity to provide 0+ interLATA, intraLATA and local automated collect calls from confinement facilities utilizing store and forward technology;

3. The appropriate charges for COCOTs providing 0+ interLATA, intraLATA and local automated collect calls from confinement facilities; and

4. Whether Local Exchange Companies should be required to provide billing and collection services to properly certified COCOTs providing 0+ interLATA, intraLATA and local automated collect calls to confinement institutions at rates for which billing and collection is provided to interexchange carriers.

Issues 1, 3, and 4 are clearly generic issues. The Commission clearly intended to address these questions on an industry-wide basis in Docket 90-305-C.

Following the issuance of Order No. 90-663, Telink was permitted to intervene in Docket No. 90-305-C by Order No. 90-755. Telink then proceeded to play an active role in the subsequent hearing on the question of whether it and other COCOTs should be permitted to provide certain intraLATA and local calling. Telink presented three witnesses at the hearing. Two of these were people responsible for the operation of confinement facilities who testified extensively concerning their experience with Telink's services. These witnesses explained in detail their administrative

problems with supplying inmates access to telephones and how those problems were addressed by the Telink system. This testimony goes to the heart of the issues in dispute and clearly supports the Commission's findings and conclusions in Order No. 91-193.

The procedural history of this case put all parties on notice that the question of whether COCOTS serving confinement facilities would be addressed in Docket 90-305-C but would apply to Telink's application. It is thus fair and completely appropriate that the Commission rely upon evidence introduced at the December 12, 1990, hearing in Docket 90-305-C in deciding the same question in this case. Additionally, Telink presented evidence through the testimony of witness Newman supporting the Commission's findings during the hearing in the instant Docket.

In paragraph 9(e), Southern Bell suggests defects in the Commission's Order based upon Hamm v. Southern Bell Telephone and Telegraph Co., ___S.C.___, 394 S.E.2d 311 (S.C. 1990). In doing so, Southern Bell relies upon far too broad a reading of that case. The holding in Hamm related to the testimony of an expert who relied for his opinions on a study. This holding does not mean that the only way that any fact can be proven in a proceeding before the Commission is through a study. Hamm simply requires an appropriate evidentiary foundation for opinion evidence from experts. In the present case the Commission relied upon the testimony of suppliers of automated services as well as their customers. These witnesses testified to their actual experiences with the system. This testimony was competent, probative, and

reliable and amply supports the findings and conclusions of Order No. 91-193.

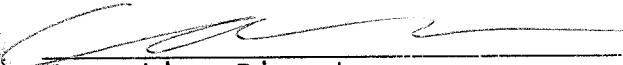
For the foregoing reasons, the Petition for Rehearing and/or Reconsideration filed by Southern Bell is hereby denied.

BY ORDER OF THE COMMISSION:


Chairman

ATTEST:

Deputy


Executive Director

(SEAL)